



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

JAN 29 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Wayne R. Warren
Chief, Division of Real Estate
and Land Management
Ohio Department of Natural Resources
1952 Belcher Drive - Bldg. C-4
Columbus, OH 43215

Dear Mr. Warren:

By letter dated July 10, 2001, Barnes Nursery, Inc. (Appellant), through counsel, filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. §§ 1451 et seq., and the Department of Commerce's implementing regulations, 15 C.F.R. Part 930, Subpart H. The appeal is taken from an objection by the Ohio Department of Natural Resources (State) to the Appellant's consistency certification for a U.S. Army Corps of Engineers' after the fact permit to maintain the project constructed during July 2000.

The public comment period for this appeal has closed. Numerous comments on this appeal were received from the public. The public comments may be viewed on our website at www.ogc.doc.gov/czma.htm. If you experience difficulties accessing the comments from the website, at your request, we will mail copies to you. Additionally, in response to a request for comments from federal agencies by Mr. Scott B. Gudes, Deputy Under Secretary for Oceans and Atmosphere, comments were received from the U.S. Fish & Wildlife Service. These comments are enclosed for your review.

To assist the Secretary in making a determination in the appeal, the parties have 30 days from receipt of this letter to file final briefs addressing matters that are in the record. After these final responses have been received, the record will close and the Secretary of Commerce will issue a decision in the appeal.

If you have any questions regarding this schedule, please contact Molly Holt at (301) 713-2967, extension 215.

Sincerely,

Karl Gleaves
Assistant General Counsel
for Ocean Services

cc: Steven D. Bell, Counsel for Appellant
Michael G. Montone, Army Corps of Engineers





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Steven D. Bell
Ulmer & Berne, LLP
Penton Media Building
1300 East Ninth Street, Suite 900
Cleveland, Ohio 44114-1583

Dear Mr. Bell:

On July 10, 2001, you filed with the Secretary of Commerce (Secretary) a notice of appeal on behalf of Barnes Nursery, Inc. (Appellant), pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. §§ 1451 et seq., and the Department of Commerce's implementing regulations, 15 C.F.R. Part 930, Subpart H. The appeal is taken from an objection by the Ohio Department of Natural Resources (State) to the Appellant's consistency certification for a U.S. Army Corps of Engineers' after the fact permit to maintain the project constructed during July 2000.

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Karl Gleaves
Assistant General Counsel
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Michael G. Montone, Army Corps of Engineers

